

115TH CONGRESS
1ST SESSION

S. 1844

To provide for coordination by the Federal Energy Regulatory Commission of the process for reviewing certain natural gas projects under the jurisdiction of the Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2017

Mr. INHOFE (for himself and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for coordination by the Federal Energy Regulatory Commission of the process for reviewing certain natural gas projects under the jurisdiction of the Commission, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Coordinating Inter-
5 agency Review of Natural Gas Infrastructure Act of
6 2017”.

7 **SEC. 2. FERC PROCESS COORDINATION.**

8 (a) DEFINITIONS.—In this section:

1 (1) AGENCY.—The term “agency” means any
2 Federal, State, or other governmental entity with
3 authority to implement an agency action.

4 (2) AGENCY ACTION.—

5 (A) IN GENERAL.—The term “agency ac-
6 tion” means any action required to be carried
7 out by an agency under Federal law with re-
8 spect to a project.

9 (B) INCLUSIONS.—The term “agency ac-
10 tion” includes the provision, and any deter-
11 mination relating to the provision, of any per-
12 mit, special use authorization, certification,
13 opinion, consultation, or approval required
14 under Federal law with respect to an applica-
15 tion for—

16 (i) authorization under section 3(e) of
17 the Natural Gas Act (15 U.S.C. 717b(e));
18 or

19 (ii) a certificate of public convenience
20 and necessity under section 7 of that Act
21 (15 U.S.C. 717f).

22 (3) COMMISSION.—The term “Commission”
23 means the Federal Energy Regulatory Commission.

24 (4) FEDERAL AUTHORIZATION.—

1 (A) IN GENERAL.—The term “Federal au-
2 thorization” means any authorization required
3 under Federal law with respect to an applica-
4 tion for—

5 (i) authorization under section 3(e) of
6 the Natural Gas Act (15 U.S.C. 717b(e));
7 or
8 (ii) a certificate of public convenience
9 and necessity under section 7 of that Act
10 (15 U.S.C. 717f).

11 (B) INCLUSIONS.—The term “Federal au-
12 thorization” includes any permit, special use
13 authorization, certification, opinion, consulta-
14 tion, or approval required under Federal law
15 with respect to an application described in sub-
16 paragraph (A).

17 (5) LEAD AGENCY.—The term “lead agency”
18 means the Commission.

19 (6) NEPA REVIEW.—The term “NEPA review”
20 means an environmental impact statement or similar
21 analysis required under the National Environmental
22 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

23 (7) PROJECT.—The term “project” means a
24 natural gas project subject to the jurisdiction of the

1 Commission that requires one or more Federal au-
2 thorizations.

3 (8) READY FOR PROCESSING.—The term
4 “ready for processing”, with respect to an applica-
5 tion for Federal authorization, means that the appli-
6 cation is sufficiently complete for the purpose of
7 commencing a review of the application for any
8 agency action.

9 (b) RESPONSIBILITIES OF AGENCIES IN PROJECT
10 NEPA REVIEWS.—

11 (1) IN GENERAL.—In carrying out any NEPA
12 review of a project, the lead agency shall—

13 (A) to the maximum extent practicable and
14 in accordance with the authority of the lead
15 agency under section 15 of the Natural Gas Act
16 (15 U.S.C. 717n), facilitate the expeditious res-
17 olution of the NEPA review; and

18 (B) ensure that the NEPA review is com-
19 pleted in accordance with—

20 (i) this section; and

21 (ii) applicable Federal law.

22 (2) DESIGNATION OF PARTICIPATING AGEN-
23 CIES.—

24 (A) INVITATIONS AND REQUESTS.—

(i) IN GENERAL.—As early as practicable in the NEPA review process for a project, the lead agency shall—

(I) identify any other agencies with jurisdiction over any Federal authorizations that may be related to the NEPA review; and

(II) invite such agencies to become participating agencies.

(ii) DEADLINE.—An invitation under clause (i)(II) shall establish a deadline for response to the invitation, to be submitted to the lead agency, which may be extended by the lead agency for good cause.

(iii) REQUESTS.—Any agency with jurisdiction over a Federal authorization relating to the NEPA review process for a project may submit a request to become a participating agency, regardless of whether the lead agency invited the agency to become a participating agency under clause (i), subject to the condition that such a request shall be timely submitted.

(B) DESIGNATION.—The lead agency shall designate as a participating agency—

(i) each agency invited under subparagraph (A)(i)(II), unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation, that the invited agency—

(I) has no jurisdiction or authority with respect to the applicable project;

(II) has no expertise or information relevant to the NEPA review of the project; or

(III) does not intend to submit comments for the record in the NEPA review; and

(ii) each agency that submits a request under subparagraph (A)(iii) to become a participating agency.

20 (C) CONSULTATION BY LEAD AGENCY.—As
21 soon as practicable after commencing a NEPA
22 review of a project, the lead agency shall coordi-
23 nate with the participating agencies to ensure
24 that the information developed during the
25 NEPA review is also usable by the participating

1 agencies in carrying out the obligations of the
2 participating agencies with respect to each Fed-
3 eral authorization for the project.

4 (3) RESPONSIBILITIES OF PARTICIPATING
5 AGENCIES.—

6 (A) EFFECT OF DESIGNATION.—Designa-
7 tion as a participating agency for a project
8 under paragraph (2)(B) does not indicate that
9 the participating agency—

- 10 (i) supports a proposed Federal au-
11 thorization for the project; or
12 (ii) has any jurisdiction over, or spe-
13 cial expertise with respect to evaluation of,
14 the Federal authorization for the project.

15 (B) EFFECT OF NONDESIGNATION.—

16 (i) IN GENERAL.—The lead agency
17 shall not, with respect to an agency that is
18 not designated as a participating agency
19 for a project under paragraph (2)(B) with
20 respect to an application for one or more
21 Federal authorizations—

- 22 (I) take into consideration any
23 agency action, comments, or other in-
24 formation submitted by the agency; or

(II) include any such comments or other information in the record of the NEPA review.

(ii) SUPPLEMENTAL NEPA REVIEW
QUESTS.—An agency that is not designated a participating agency for a project under paragraph (2)(B) may not request to develop a supplemental NEPA review of a project, unless the agency—

(I) demonstrates that such a review is necessary for the agency to carry out an obligation of the agency with respect to a Federal authorization for the project; and

(II) requires information that could not have been obtained during the NEPA review carried out by the lead agency for the project.

(c) CONCURRENT AGENCY ACTION REVIEWS.—

(1) APPLICATIONS.—

1 agency action for a Federal authorization for a
2 project shall—

3 (i) not later than 45 days after the
4 date on which the application is received
5 by the agency, provide to the applicant a
6 notice describing whether the application is
7 ready for processing; and

8 (ii) if the agency determines that an
9 application is not ready for processing, in-
10 clude in the notice described in clause (i)
11 a comprehensive description of the infor-
12 mation required to be submitted for the
13 application to be ready for processing.

14 (B) REVISED APPLICATIONS.—If an appli-
15 cant submits a revised application for Federal
16 authorization for a project after receiving a no-
17 tification under subparagraph (A) that the initial
18 application was not ready for processing,
19 the agency receiving the revised application
20 shall, not later than 30 days after the date on
21 which the revised application is received—

22 (i) determine whether the revised ap-
23 plication—

24 (I) provided all information in-
25 cluded in the comprehensive descrip-

1 tion described in subparagraph
2 (A)(ii); and
3 (II) is ready for processing; and
4 (ii) if the agency determines that the
5 revised application is not ready for pro-
6 cessing, provide to the applicant a notice
7 describing the information included in the
8 comprehensive description under subpara-
9 graph (A)(ii) that the applicant did not in-
10 clude in the revised application.

11 (C) SUPPLEMENTATION.—An agency con-
12 sidering an aspect of an application for a Fed-
13 eral authorization may require the applicant to
14 supplement the application with such additional
15 information as the agency determines to be nec-
16 essary to complete the review of the application,
17 regardless of whether the agency has deter-
18 mined under subparagraph (A) or (B) that an
19 application is ready for processing.

20 (2) CONCURRENT REVIEWS.—Each agency car-
21 rying out an agency action for a Federal authoriza-
22 tion (other than a NEPA review) shall—

23 (A) unless doing so would impair the abil-
24 ity of the agency to conduct an analysis that
25 could not otherwise be developed during the

1 NEPA review carried out by the lead agency for
2 the project, to the maximum extent authorized
3 by law, conduct the agency action—

4 (i) concurrently and in conjunction
5 with the NEPA review; and

(B) submit to the lead agency progress reports not less frequently than once every 90 days; and

19 (d) MODIFICATIONS TO, AND FAILURES TO MEET,
20 DEADLINES.—

21 (1) IN GENERAL.—In any case in which an
22 agency (including the lead agency) modifies or fails
23 to meet a deadline required with respect to an agen-
24 cy action for a Federal authorization for a project
25 under the applicable schedule established by the

1 Commission under section 15(c)(1) of the Natural
2 Gas Act (15 U.S.C. 717n(c)(1)), the head of the
3 agency (including, in the case of a failure by a State
4 agency, the head of the appropriate Federal agency)
5 shall, by not later than 15 days after the applicable
6 deadline, provide a notice of the modification or fail-
7 ure to—

- 8 (A) the appropriate committees of Con-
9 gress;
10 (B) the lead agency (if applicable);
11 (C) the Director of the Office of Manage-
12 ment and Budget; and
13 (D) the developer of the project.

14 (2) INCLUSION.—A notice under paragraph (1)
15 shall include an implementation plan to ensure com-
16 pletion of the relevant agency action for the Federal
17 authorization.

18 (3) REQUIREMENT OF COMMISSION.—The Com-
19 mission shall provide to each affected agency a no-
20 tice describing any change in a schedule established
21 for a project under section 15(c)(1) of the Natural
22 Gas Act (15 U.S.C. 717n(c)(1)).

23 (e) ADVANCED SURVEYS.—

24 (1) IN GENERAL.—In any case in which an
25 agency action for a Federal authorization requires

1 the applicant to submit any environmental data for
2 purposes of filing or submitting an application, the
3 agency shall consider any such data gathered by aer-
4 ial or other remote means.

5 (2) CONDITIONAL APPROVAL.—An agency may
6 grant a conditional approval for Federal authoriza-
7 tion, subject to the condition that any data described
8 in paragraph (1) shall be verified by a subsequent,
9 onsite inspection.

10 (f) ACCOUNTABILITY, TRANSPARENCY, AND EFFI-
11 CIENCY.—

12 (1) IN GENERAL.—With respect to an applica-
13 tion for Federal authorization that requires more
14 than 1 Federal authorization, the Commission, in
15 consultation with each agency conducting an agency
16 action for a Federal authorization, shall monitor and
17 record information relating to the agency actions re-
18 quired to complete the Federal authorizations, in-
19 cluding—

20 (A) any applicable schedule established by
21 the Commission under section 15(c)(1) of the
22 Natural Gas Act (15 U.S.C. 717n(c)(1));

23 (B)(i) a list of all agency actions required
24 by each applicable agency to obtain a final deci-
25 sion regarding the Federal authorization;

(iii) a point of contact at each agency responsible for each such agency action; and

16 (g) SAVINGS CLAUSE.—Nothing in this section—

17 (1) supersedes, amends, or modifies any provi-
18 sion of—

(A) the National Environmental Policy Act
of 1969 (42 U.S.C. 4321 et seq.); or

(B) any other Federal law; or

22 (2) affects the responsibility of any Federal of-
23 ficer or employee to comply with or enforce such a
24 provision.

